



April 10, 2009

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# ENGROSSED

## HOUSE BILL No. 1014

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DIGEST OF HB 1014 (Updated April 8, 2009 11:36 am - DI 102)

**Citations Affected:** IC 22-9.

**Synopsis:** Age discrimination. Increases from 70 years of age to 75 years of age the maximum age limit for age discrimination claims. Repeals a provision that prohibits the commissioner of labor from publicizing age discrimination proceedings.

**Effective:** July 1, 2009.

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**Smith V, Niezgodski, Soliday**

(SENATE SPONSORS — KRUSE, TALLIAN, YOUNG R MICHAEL, DEIG)

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January 7, 2009, read first time and referred to Committee on Labor and Employment.  
February 5, 2009, amended, reported — Do Pass.  
February 9, 2009, read second time, amended, ordered engrossed.  
February 10, 2009, engrossed.  
February 12, 2009, read third time, call withdrawn.  
February 17, 2009, reread third time, passed. Yeas 58, nays 37.

**SENATE ACTION**

February 19, 2009, read first time and referred to Committee on Pensions and Labor.  
April 9, 2009, amended, reported favorably — Do Pass.

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EH 1014—LS 6060/DI 107+



April 10, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1014

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A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 22-9-2-1 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2009]: Sec. 1. For the purpose of this chapter:  
3 "Discrimination" shall mean dismissal from employment of, or  
4 refusal to employ or rehire any person because of his age, if such  
5 person has attained the age of forty (40) years and has not attained the  
6 age of ~~seventy (70)~~ **seventy-five (75)** years.  
7 "Person" shall mean and include an individual, partnership, limited  
8 liability company, corporation, or association.  
9 "Employer" shall mean and include any person in this state  
10 employing one (1) or more individuals, labor organizations, the state  
11 and all political subdivisions, boards, departments and commissions  
12 thereof, but does not include:  
13 (1) religious, charitable, fraternal, social, educational or sectarian  
14 corporations, or associations not organized for private profit, other  
15 than labor organizations and nonsectarian corporations, or  
16 organizations engaged in social service work; or  
17 (2) a person or governmental entity which is subject to the federal

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Age Discrimination in Employment Act (29 U.S.C. 621 et seq.).

SECTION 2. IC 22-9-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. It is declared to be an unfair employment practice and to be against public policy to dismiss from employment, or to refuse to employ or rehire, any person solely because of his age if such person has attained the age of forty (40) years and has not attained the age of ~~seventy (70)~~ **seventy-five (75)** years.

SECTION 3. IC 22-9-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. It is hereby declared to be an unfair employment practice for any labor organization to deny full and equal membership rights to any applicant for membership or to fail or refuse to classify properly or refer for employment any member solely because of the age of such applicant or member if such person has attained the age of forty (40) years and has not attained the age of ~~seventy (70)~~ **seventy-five (75)** years.

SECTION 4. IC 22-9-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Any provision in any contract, agreement or understanding entered into on or after October 1, 1965, but before October 1, 1979, which shall prevent or tend to prevent the employment of any person solely because of ~~his~~ **the person's** age, who has attained the age of forty (40) years and has not attained the age of sixty-five (65) years shall be null and void.

(b) Any provision in any contract, agreement or understanding entered into after September 30, 1979, **and before July 1, 2009**, which prevents or tends to prevent the employment of any person solely because of ~~his~~ **the person's** age, who has attained the age of forty (40) years and has not attained the age of seventy (70) years is null and void.

**(c) Any provision in any contract, agreement, or understanding entered into after June 30, 2009, that prevents or tends to prevent the employment of any person who has attained forty (40) years of age and has not attained seventy-five (75) years of age solely because of the person's age is null and void.**

SECTION 5. IC 22-9-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. Nothing contained herein shall be deemed to repeal any of the provisions of any law of this state relating to discrimination because of age, race or color, religion, or country of ancestral origin. Nothing herein shall be deemed to limit, restrict or affect the freedom of any employer in regard to (a) fixing compulsory retirement requirements for any class of employees at an age or ages less than ~~seventy (70)~~ **seventy-five (75)** years; (b)

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1 fixing eligibility requirements for participation in, or enjoyment by  
2 employees of, benefits under any annuity plan or pension or retirement  
3 plan on the basis that any employee may be excluded from eligibility  
4 therefor who, at the time he would otherwise become eligible for such  
5 benefits, is older than the age fixed in such eligibility requirements; or  
6 (c) keeping age records for any such purposes.

7 SECTION 6. IC 22-9-2-9 IS REPEALED [EFFECTIVE JULY 1,  
8 2009].

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1014, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 37, delete "Except as provided in IC 22-9-2.1,".

Page 4, line 37, delete "no" and insert "No".

Page 12, between lines 29 and 30, begin a new paragraph and insert:

**"Sec. 16. This chapter may not be construed to prohibit compulsory retirement of an employee of a state educational institution who:**

**(1) is at least sixty-five (65) years of age; and**

**(2) for the two (2) year period immediately before retirement, is employed in a bona fide executive or higher policymaking position."**

Page 12, line 30, delete "16." and insert "17.".

Page 12, line 34, delete "(1) year after" and insert **"hundred eighty (180) days, as provided in IC 22-9-1-3(p), from the date of the occurrence of"**.

Page 12, line 34, after "practice" insert ".".

Page 12, delete line 35.

and when so amended that said bill do pass.

(Reference is to HB 1014 as introduced.)

NIEZGODSKI, Chair

Committee Vote: yeas 6, nays 5.

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 HOUSE MOTION

Mr. Speaker: I move that House Bill 1014 be amended to read as follows:

Page 10, line 18, after "22-9-1-3(h)." insert **"For purposes of this chapter, the term does not include a board of directors of a corporation."**

(Reference is to HB 1014 as printed February 6, 2009.)

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## COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred House Bill No. 1014, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 22-9-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. For the purpose of this chapter:

"Discrimination" shall mean dismissal from employment of, or refusal to employ or rehire any person because of his age, if such person has attained the age of forty (40) years and has not attained the age of ~~seventy (70)~~ **seventy-five (75)** years.

"Person" shall mean and include an individual, partnership, limited liability company, corporation, or association.

"Employer" shall mean and include any person in this state employing one (1) or more individuals, labor organizations, the state and all political subdivisions, boards, departments and commissions thereof, but does not include:

(1) religious, charitable, fraternal, social, educational or sectarian corporations, or associations not organized for private profit, other than labor organizations and nonsectarian corporations, or organizations engaged in social service work; or

(2) a person or governmental entity which is subject to the federal Age Discrimination in Employment Act (29 U.S.C. 621 et seq.).

SECTION 2. IC 22-9-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. It is declared to be an unfair employment practice and to be against public policy to dismiss from employment, or to refuse to employ or rehire, any person solely because of his age if such person has attained the age of forty (40) years and has not attained the age of ~~seventy (70)~~ **seventy-five (75)** years.

SECTION 3. IC 22-9-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. It is hereby declared to be an unfair employment practice for any labor organization to deny full and equal membership rights to any applicant for membership or to fail or refuse to classify properly or refer for employment any member solely because of the age of such applicant or member if such person has attained the age of forty (40) years and has not attained the age of ~~seventy (70)~~ **seventy-five (75)** years.

SECTION 4. IC 22-9-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Any provision in any contract,

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agreement or understanding entered into on or after October 1, 1965, but before October 1, 1979, which shall prevent or tend to prevent the employment of any person solely because of ~~his~~ **the person's** age, who has attained the age of forty (40) years and has not attained the age of sixty-five (65) years shall be null and void.

(b) Any provision in any contract, agreement or understanding entered into after September 30, 1979, **and before July 1, 2009**, which prevents or tends to prevent the employment of any person solely because of ~~his~~ **the person's** age, who has attained the age of forty (40) years and has not attained the age of seventy (70) years is null and void.

**(c) Any provision in any contract, agreement, or understanding entered into after June 30, 2009, that prevents or tends to prevent the employment of any person who has attained forty (40) years of age and has not attained seventy-five (75) years of age solely because of the person's age is null and void.**

SECTION 5. IC 22-9-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. Nothing contained herein shall be deemed to repeal any of the provisions of any law of this state relating to discrimination because of age, race or color, religion, or country of ancestral origin. Nothing herein shall be deemed to limit, restrict or affect the freedom of any employer in regard to (a) fixing compulsory retirement requirements for any class of employees at an age or ages less than ~~seventy (70)~~ **seventy-five (75)** years; (b) fixing eligibility requirements for participation in, or enjoyment by employees of, benefits under any annuity plan or pension or retirement plan on the basis that any employee may be excluded from eligibility therefor who, at the time he would otherwise become eligible for such benefits, is older than the age fixed in such eligibility requirements; or (c) keeping age records for any such purposes.

SECTION 6. IC 22-9-2-9 IS REPEALED [EFFECTIVE JULY 1, 2009]."

Delete pages 2 through 13.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1014 as reprinted February 10, 2009.)

KRUSE, Chairperson

Committee Vote: Yeas 7, Nays 1.

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